

No. 18-9111

In The Supreme Court of The United States

El-Sayid A. Nosair — Pro se,
Petitioner

v.
United States of America
Respondent

Motion For Leave To File Out-of-Time
Petition For Rehearing

Petitioner respectfully moves for leave to file the annexed petition for rehearing of the Order of this Court denying the petition for writ of Certiorari in this case, entered on June 03, 2019. Due to "unusual circumstances" that the Rules of this Court do not anticipate, no timely petition for Rehearing was filed inasmuch as no grounds for such a petition then existed. But rehearing is sought at this time because, as is pointed out more fully in annexed petition for rehearing, a decision of this Court was rendered June 17, 2019, in No. 17-1046, Gamble v. United States, which is in direct conflict with the "Full Faith & Credit Clause, U.S. Constitution, Art. VI, Section 2. A copy of that opinion from

this Court appears in this Court's files.

The petition for a writ of certiorari was granted in Gamble v. United States, No. 17-1046. The Gamble was conflicts with U.S. Const. Art. VI, Sec. 2, by using "appeal to force" — stare decisis, as the basis for its decision, rather than the Constitution or a Statute of Law. Moreover, since the litigation in Gamble arose out of the same jurisdictional question giving rise to the instant litigation — both State and Federal governments, prosecuting the "same" offense by different means as the "practical" equivalent dictating a "practical" result. As demonstrated in the annexed petition, it would be manifestly unfair to the petitioner should the position of the Respondents in Gamble (which is identical parallelism to that of petitioner herein) be sustained absent 'Constitutional objection — i.e., a common defense through either a denial of petition for rehearing or this Court's affirmance of the Gamble case.

Unusual circumstances has hindered timely filings in this case due to "unusual circumstances" here at U.S.P. Allenwood for the last six (6) months, see.g., exhibits 1-2-3 Bureau of Prisons (BOP)

"Memorandum For Record", September^{16,} 24, and 27, 2019. Although
x See Exhibit 4
this petition for rehearing is filed after the expiration of the time
x
prescribed in Rule 44.1, the grounds upon which it is based
arose during and after such time, this Court clearly has power,
in its discretion and in the interest of justice, to entertain the
petition in these unusual circumstances. See *United States v.*
Ohio Power Co., 353 U.S. 98 (1957); *Gondack v. Pan American*
World Airways, 370 U.S. 918 (1962), i.e., where cases are Constit-
utional "legal" twins.

Dated: October 03, 2019

Respectfully Submitted,



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Case No. 18-9111

In The Supreme Court of The United States

El-Sayyid Nosair -- Petitioner,

v.

United States of America, Respondent.

PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an Order (1) vacating its denial of the petition for writ of certiorari, entered on June 3, 2019, and (2) granting the petition. As grounds for this motion, Petitioner states the following:

Preliminary Affirmative Defense In Light Of
Gamble v. United States, No. 17-646
(Decided June 17, 2019)

At the outset the inescapable fact that federal courts of limited jurisdiction. They possess "only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)(internal citations omitted). Accordingly, a federal court has an "independent obligation" to investigate the limits of its subject matter jurisdiction. See Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006). This is so even when the parties "either overlook or elect not to press" the issue. Henderson v. Shinsaki,

131 S.Ct. 1197, 1202 (2011), or attempt to consent to a court's jurisdiction, see Sosna v. Iowa, 419 U.S. 393, 398 (1975). Our obligation to examine our subject-matter jurisdiction is triggered whenever that jurisdiction is "fairly in doubt." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1945 (2009). Also, see United States Court of appeals for the Fourth Circuit Women's Law Center of Maryland, LEXIS 18618; 2011 U.S.

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Ground(s) Presented

1. In *Gamble v. United States*, No. 17-646 (Dec. 6-17-19), The United States Supreme Court Affirmed An Avulsion, i.e., The "Dual Sovereignty Exception," Which Surpassed Its Rule Making Authority Under 28 U.S.C. § 2072(a) All In Violation of 28 U.S.C. § 2072(b), Abridging The Substantive Right of The Double Jeopardy Provision of The United States Constitution's Fifth Amendment Guarantee To The Sovereignty of All American Citizens. Such Violated The Separation of Powers Doctrine; and,
 - a. It Then Follows That, The "Dual Sovereignty" Exception Is Repugnant To The Constitution's Article IV, Section 1, Put Into Practice Under Federal Law -- 28 U.S.C. § 1738, Constitutional Evidence, A State's Acquittal or Criminal Conviction Is Therefore Treated As An Exception To The Command of The Constitution To The Governments Therein;
 - b. Furthermore, The Protection Under This Aegis of The Supreme Court's Affirming The "Dual Sovereignty" Exception, The Executive Branch of The United States It Shielded From Honoring The United States Constitution's Article IV, Section 1, And The Due Process Clause of The Fifth Amendment's Command, Notwithstanding To Foreign Nations.
2. Therefore, Is The Self-Incrimination Clause More Dominant Than The Double Jeopardy Clause-When Both Are Part of The Fifth Amendment, Or; Is The Fifth Amendment Like A Chameleon.

Statement of Facts

The facts of this case continues from Petitioner's writ of certiorari, Case No. 18-9111, pages 4-8, entitled "Statement of the Case," which Petitioner incorporates by reference and incorporation. This Court denied the writ of certiorari due to Petitioner's lack of orismological knowledge of technical terms and the procedure as to how to present "nonrecord" evidence, otherwise, deemed "unprofessional" conduct, i.e., unless brought to the Court's attention through "Judicial Notice."

Now, with the "judicial notice" evidence through "judicial Notice" before this Court, which neither the trial court nor the court of appeals considered, which would justify a remand order. The evidence consists of two post-conviction published "Books," Triple Cross" by Peter Lance (William Marrow 2016) and "Ghost Wars" by Steve Coll (Penguin 2004) and from a copy to the "Plea" Court transcript, of the defense witness---Ali Muhammad, which "dated" after Petitioner was sentenced. See Judicial Notice #7, "lodged" with this Court's Clerk for the Court's consideration on the official documents not in the record that shed light on the arguments in this case.

Notwithstanding the above, more "new reliable evidence" has come to Petitioner's attention from the Secretary of State" of the United States, see Judicial Notice #5 and 8, "lodged" with this Court's Clerk for consideration on arguments before this Court.

Notwithstanding the above, another event occurred, *Gamble v. United States*, No. 17-646 (Decided 6-17-19, Supreme Court), this event relates to the "source of power" to make a "Rule," i.e., an "avulsion," that severed Petitioner substantive right under the Constitution as well as the "Governments" duty under the Constitution's Article IV, Full faith and Credit Clause Mandate thereto. As such, "Judicial Notice" enables this Court to reach these facts of evidence in light of "all evidence."

The Gamble majority holding reveals how Petitioner's State case was re-used to support his federal racketeering charges even though he was found not guilty in the State Court. The "Dual Sovereignty" exception allowed the federal Government to disobey Article IV, Section 1, Full Faith and Credit Clause as well as violate Petitioner's right against "Double Jeopardy," and Congress made a law giving the Supreme Court supervisory power over the lower courts, however, there is a judicial law -- 28 U.S.C. § 2072(b), that limits that supervisory power to make rules of procedure only, not laws affecting substantive rights. The "Dual Sovereignty" exception doctrine exceeded the limits set by Congress and violated the substantive right of double jeopardy.

"Judicial Notice" allows this Court to review exhibits from the Secretary of State Department salient facts that are nonrecord events outside of the record, particularly, those facts involving international law that Petitioner had reason not to prepare for his "defense."

Reasons For Granting The Writ

- I. The Distribution And Exercise Of The Sovereignty Of The American People Is An Important Question Of Federal Law
- A. Powers Conferred To U.S. Government By The Constitution

Petitioner asks This Court to articulate the Powers given to the three branches of Government from the "Preamble" of the Constitution of The United States:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

- B. Rights of The People Via U.S. Constitution

And, Petitioner asks this Court to articulate the first ten "Bill of Rights" establish for the "People," particularly, the Fifth and Sixth Amendments.

Read together does it appear that the Constitution is a law for rulers and the people except at times of "War." That is, established by the written document itself for the Governments, and the People; e.g., Kennedy v. Mendoza-Martinez, 372 U.S. 144, 165(1963).

In Kennedy v. Mendoza-Martinez, supra at 165, the Court held: "The Constitution of the United states ia a law for rulers and people, equally in war and peace, and covers with its shield of its protection all classes of men, at all times, and under all circumstances." "The rights guaranteed by the Fifth and Sixth Amendments are "preserved to every one accused of crime who is not attached to the army, or navy, or militia in actual service."

Specified Requirement Under Article II

Article II, Section [8], Before he enter on the Execution of his Office he shall take the following Oath or Affirmation:
"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.

Specified Power To Judiciary

Article III, Section 2. Clause [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under Their Authority[.]"

Congress' Legislation

Under Congress' Legislative authority of Article I, Section 1, Congress enacted a law of procedure for the Supreme Court to follow under federal law -- Rule Making Authority, 28 U.S.C. § 2072(a), which reads:

- (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

Section 2072(b), establishes a limitation of the Rules that the Supreme Court shall make, this section reads:

- (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Specified Duty To Congress

Article IV,-Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State: And Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Legislation

As such, Congress legislated 28 U.S.C. § 28 U.S.C. § 1738 -- Full Faith and Credit provision, which reads in relevant part:

§ 1738 State and Territorial Statutes and judicial proceedings; full faith and Credit

The Acts of Legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of judge of the court that said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, Shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

II. Certain Wrongs Affect More Than A Single Right And, Accordingly, Can Implicate More Than One of The Constitution's Commands

In a line of cases this Court has held or recognized that: "Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's dominant character. Rather, we examine each constitutional provision in turn." See *United States v. Good Real Property*, 510 U.S. 43, 49-50 (1993) (*Soldal v. Cooky County*, 506 U.S. 56, 70 (1992)).

1. Under The United States Constitution Article IV, Section 1, Commands The Government To Provide Evidence To The National Government That Evidence Exist

Congress in legislating 28 U.S.C. § 1738, put this Constitutional Command in practice for federal courts to honor State Courts Acts, records and judicial proceedings.

2. Under The Constitution Of The United States Known As The "Bill of Rights" Stemming From Its "preamble" The Fifth Amendment Right Against "Double Jeopardy" By The Governments.

As a "Whole" the Fifth Amendment guarantees the "People" as a "Whole," the "American People," the right of:

"[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb;"

Hence, "same offense," is subject to the "equivalent" doctrine were the two sovereigns of the American "People" are concern. The doctrine of "equivalents" means that if two devices do the same work in substantially the same way and accomplish substantially the same result, they are the same. See e.g., *Abbott v. Perez*, 138 S.Ct. 2305, at 2319 (2018) ("because it was the

["practical equivalent"] ..."). As such, the "practical effect" rule serves a valuable purpose, the "practical effect" inquiry prevents [] manipulation." Congress scheme could be frustrated. The harms that Congress wanted to avoid could occur so long as the [] was careful about its terminology. The "practical effect" inquiry prevents such manipulation." Id. at 2319.

i. Administration of Criminal Justice

The Supreme Court is the juridical entity of United States and subordinated to the Constitution of the United States and to its laws, see e.g., *AES Puerto Rico, L.P. v. Trujillo-Panisse* 857 F.3d 101, at 111(1st Cir 2017). Thus, this Court is the "ultimate" interpreter of the "justice" of the Constitution, Law of the United States, and Treaties made thereof.

The question boils down to -- does State and federal law, i.e., having concurrent jurisdiction, coextensive/coextensively the "same offense" under the Constitution's Fifth Amendment. See e.g., *Kastigar v. United States*, 406 U.S. 441, at 450, n.30 (1972)(Harmonizing the State Immunity Statute with Federal Immunity statute).

Moreover, in *Kastigar*, *supra* 450-51: "We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the incriminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States." This Constitutional mandate applied to both the State and federal

governments. Likewise, the "Dual Sovereignty" exception can not supplant the "Double Jeopardy" provision of the Constitution.

No doubt, "The constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, all times, and under all circumstances." Kennedy v. Mendoza-Martinez, 372 U.S. 144, 165 (1963)(quoting Ex parte Milligan, (US) 4 Wall, 2, 120, 121, 18 L.ed 281, 295 (1866).

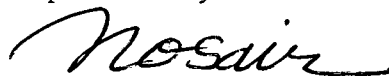
This Court in Albright v. Oliver, 510 U.S. 266, at 281 (1994)("Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of governmental behavior, that amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." Id.

Conclusion

For the reasons set forth above, as well as these contained in the petition for writ of certiorari, Petitioner prays that this Court grant rehearing of the Order of denial, vacate that Order, grant the petition and review the judgment and opinion below.

Dated: July 26, 2019.

Respectfully submitted,



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Certificate of Pro se Litigant

As a pro se litigant, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 44.2.

Dated: July 26 , 2019

/s/ Nosair
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**Additional material
from this filing is
available in the
Clerk's Office.**